IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8762 OF 2007

Mr.Mervyn Joseph Cardozo and Ors. ...Petitioners
Versus
The Municipal Corporation
of Gr.Mumbai and Ors. ....Respondents

Bipin Joshi for the petitioner
Ms.Nisha Dabhade for respondent no.1.
Mr.Sameer Bhalekar for respondent nos.1 to 4 &
5(a) to 5(g).

CORAM: S.C.DHARMADHIKARI, J.

4th December, 2007.

P.C. :

1. Rule.

2. Mr.Bhalekar, waives service for respondent Nos.2 to 4 and 5(a) to 5(g). Learned Advocate appearing for BMC waives service for first respondent.

3. Admittedly, Suit No. 4835 of 1982 is pending.

4,. Chamber Summons has been taken out in this Suit and the relief claimed is that the Affidavits filed in support by the plaintiffs on 23.11.2006 be rejected.

5. While it is true that the Learned Judge relied upon an earlier order of the court and found that the present Affidavits did not meet the requirements stipulated therein, in my view, the Chamber Summonses were misconceived. The contesting defendants could have cross-examined the witness and put to him the questions as are necessary to elicit the requisite answers, so also, to bring to the notice of the court at later stage, that the Affidavit was lacking in material particulars and did not meet the requirements stipulated in law or did not satisfy the directions issued by the court earlier. Keeping all these remedies open to the contesting defendants, the orders under challenge are set aside and the Trial Court is directed to dispose off the suit as expeditiously as possible. Petition disposed off in these terms.

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